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S. HRG. 99-462

NOMINATION OF RONALD ELLIS ROBERTSON

ORIGINAL

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

NOMINATION OF RONALD ELLIS ROBERTSON TO BE GENERAL COUNSEL OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

OCTOBER 9, 1985

Printed for the use of the Committee on Finance

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NOMINATION OF RONALD E. ROBERTSON TO BE GENERAL COUNSEL OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

WEDNESDAY, OCTOBER 9, 1985

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The committee met, pursuant to notice, at 2 p.m., in room SD-215, Dirksen Senate Office Building, Hon. David Durenberger presiding. berger presiding.

Present: Senator Durenberger.

[The press release announcing the hearing follows:]

[Press Release No. 85-080]

FINANCE COMMITTEE SCHEDULES HEARING ON HEALTH AND HUMAN SERVICES NOMINEE

The nomination of Ronald E. Robertson to be General Counsel of the Department of Health and Human Services will be considered by the Senate Committee on Finance on October 9, Chairman Bob Packwood (R-Oregon) announced today.

The hearing is scheduled to begin at 2 p.m., Wednesday, October 9, 1985, in Room SD-215 of the Senate Dirksen Office Building in Washington.

Senator David Durenberger (R-Minnesota), Chairman of the Committee on Finance's Subcommittee on Health, will preside at the hearing, Senator Packwood said.

Ronald Robertson, 40, a native of Long Beach, California, currently is a consultant to the Department of Health and Human Services in Washington.

Mr. Robertson also has been Chief Counsel to Reagan-Bush '84, practiced law in Washington and Los Angeles and was a Professor of Law at Pepperdine University in Malibu, Calif.

Senator DURENBERGER. This afternoon's hearing will come to order. This afternoon we are meeting to consider the nomination of Ronald E. Robertson to be general counsel of the Department of Health and Human Services. Mr. Robertson has been the chief counsel for Reagan-Bush 1984. He previously practiced law in Washington and Los Angeles, where his experience was concentrated in the health care area. Mr. Robertson was also a professor of law at Pepperdine University in California and Mississippi College. The committee has reviewed the nominee's financial disclosure material. There is a letter from the Director of the Office of Government Ethics signifying that Mr. Robertson is in compliance with the Ethics of Government Act, and this will be made part of the hearing record.

[The prepared letter from the Office of Government Ethics follows:]

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UNITED STATES OF AMERICA,
OFFICE OF GOVERNMENT ETHICS,
OFFICE OF PERSONNEL MANAGEMENT,
Washington, DC, September 24, 1985.

Hon. ROBERT PACKWOOD,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Ronald E. Robertson, who has been nominated by President Reagan for the position of General Counsel, Department of Health and Human Services.

We have reviewed the report and have also obtained advice from the Department of Health and Human Services concerning any possible conflict in light of the Department's functions and the nominee's proposed duties. Based thereon, we believe that Mr. Robertson is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

DAVID H. MARTIN, *Director.*

Senator DURENBERGER. Now, we are fortunate, as is Mr. Robertson, to have with us today the junior Senator from the State of California, Mr. Pete Wilson. Senator Wilson, we appreciate very much your being here.

STATEMENT OF THE HONORABLE PETE WILSON, U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator WILSON. Thank you very much, Mr. Chairman. I am delighted to have the privilege to introduce to you a fellow Californian, Ronald Robertson. You have, in your opening statement, touched on the outline of what I think is a superb career and one that eminently qualifies Mr. Robertson for the job that he has been nominated by the President to fill, the all-important position of general counsel to the Department of Health and Human Services. As you have pointed out, both his own academic credentials and his experiences as a professor and practitioner of the law with specialization in the health care field gives him the kind of experience and the kind of insight and knowledge of the law that will be essential in performing in this very challenging position. I think that we, in the Senate, have seen the complexity of the field of health care. The entire panoply of services provided by the Department has increasingly generated the necessity for expert legal and legislative counsel, both to deal with outright legal challenges to the administration of the law and also in a troubleshooting way the kind of thing that you look to a general counsel to provide. He is, as you have pointed out, no stranger to the role of troubleshooter. Anyone who served as chief counsel to the Reagan-Bush campaign of 1984 certainly has received an opportunity to exercise the kind of judgment that seeks to avoid problems before they develop. But it is in the capacity as a student and teacher of the law and as someone who has had the practical experience in the years that he has been in private practice that I think he brings the ideal combination of natural ability and the kind of experience that really superbly qualifies him for this job. In addition to his professional capabilities, he is a man of the highest character. He has been a partner in a distinguished Los Angeles law firm, Musick, Peeler & Garrett. I can tell you from personal knowledge that his partners and other members of the bar in the city of Los Angeles hold him in

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the highest regard as not only a highly competent professional but as someone of unimpeachable good character and integrity. He is also a man who enjoys the reputation for good humor, which seems to be not the least of the qualities that we should ask of the general counsel of HHS. So, since you are well acquainted with his background, I won't detail to you the distinctions that he has won. He was a fine student of the law, a fine teacher of the law, and a first-rate practitioner of the law. I think the President has made an excellent choice and one that will reflect great credit upon the administration, and more importantly, one that will serve the people of the United States admirably. So, I make this introduction with not only great pleasure but with great pride.

Senator DURENBERGER. Thank you very much. Mr. Robertson, if you have a statement, we will welcome it now; except after that introduction, it may be downhill, but you use your judgment.

STATEMENT OF RONALD E. ROBERTSON, NOMINEE FOR GENERAL COUNSEL TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. ROBERTSON. Thank you, Mr. Chairman. I do have a brief opening statement. First, as a native Californian, I want to thank Senator Wilson for that most gracious introduction. It is a high honor for me to appear before you as President Reagan's nominee for the office of general counsel of HHS. I consider it a great privilege to have been asked by the President to participate in fulfilling the mission of the Nation's principal agency for health and human services. Through the leadership of Congress and this administration, I am confident that the citizens of this country will continue to benefit from quality health care and social services on a fiscally sound and equitable basis. I know that this represents a monumental challenge and, for my part, I pledge to do my utmost to successfully meet that challenge. Mr. Chairman, that concludes my prepared statement, but I would be happy to answer any questions that you have, and I appreciate the opportunity of appearing before you today.

Senator DURENBERGER. Thank you very much for that statement.

[The prepared written statement of Mr. Robertson and biographical sketch follow:]

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STATEMENT OF

RONALD E. ROBERTSON

before

SENATE COMMITTEE ON FINANCE

OCTOBER 9, 1985

NOMINATION TO BE GENERAL COUNSEL

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. Chairman and Members of the Committee:

First I want to thank Senator Wilson for that most gracious introduction.

It is a high honor for me to appear before you as President Reagan's nominee for the Office of General Counsel of the Department of Health and Human Services. I consider it a great priviledge to have been asked by the President to participate in fulfilling the mission of the Nations principal agency for health and human services.

Through the leadership of Congress and this Administration, I am confident that the citizens of this country will continue to benefit from quality health care and social services on a fiscally sound and equitable basis.

I know that this represents a monumental challenge. For my part, I pledge to do my utmost to successfully meet that challenge.

Mr. Chairman, that concludes my prepared statement, but I would be glad to answer any questions that you or any member of the Committee may have, and I thank the Committee for the opportunity to appear here today.

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RESPONSES OF

RONALD ELLIS ROBERTSON

TO

INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL:

1. Name:

RONALD ELLIS ROBERTSON

2. Residence Address:

2805 SHAWN LEIGH DRIVE
VIENNA, VIRGINIA 22180

Mailing Address:

OFFICE OF THE GENERAL COUNSEL
DEPARTMENT OF HEALTH AND HUMAN SERVICES
200 INDEPENDENCE AVENUE, S.W.
ROOM 722A
WASHINGTON, D.C. 20201

3. Date and place of birth:

NOVEMBER 8, 1935; LONG BEACH, CALIFORNIA

4. Marital Status:

MARRIED TO CAROLYN JANE CHURCHMAN DEVITO ROBERTSON

5. Names and ages of children:

MATTHEW DOUGLAS ROBERTSON, AGE 14
RACHEL ANN ROBERTSON, AGE 6

6. Education:

a) PASO ROBLES UNION HIGH SCHOOL, PASO ROBLES CALIFORNIA - 1949-1953 - HIGH SCHOOL DIPLOMA

b) UNIVERSITY OF CALIFORNIA AT LOS ANGELES 1954-1956

c) COMPTON COLLEGE, COMPTON, CALIFORNIA 1958-1959 - AA DEGREE (1959)

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d) CALIFORNIA STATE UNIVERSITY AT LOS ANGELES 1959-1961 - BACHELOR OF SCIENCE DEGREE - BUSINESS ADMINISTRATION (1961)

e) UNIVERSITY OF CALIFORNIA AT LOS ANGELES, SCHOOL OF LAW - 1961-1964 - JURIS DOCTOR DEGREE (1964)

7. Employment record:

a) 1963-1967 - ASSOCIATE, LAW FIRM OF MUSICK, PEELER & GARRETT, ONE WILSHIRE BOULEVARD, LOS ANGELES, CALIFORNIA

b) 1967-1971 - CORPORATE COUNSEL - AVERY PRODUCTS CORPORATION, SAN MARINO, CALIFORNIA

c) 1971-1975 - VICE-PRESIDENT AND GENERAL COUNSEL - AMCORD, INC. (FORMERLY AMERICAN CEMENT CORPORATION) (NYSE), NEWPORT BEACH, CALIFORNIA

d) 1975-1978 - PROFESSOR OF LAW, MISSISSIPPI COLLEGE, SCHOOL OF LAW, CLINTON, MS

e) 1978-1981 - PROFESSOR OF LAW, PEPPERDINE UNIVERSITY, SCHOOL OF LAW, MALIBU, CA

f) 1981-1983 - PARTNER, LAW FIRM OF MUSICK, PEELER & GARRETT, ONE WILSHIRE BOULEVARD, LOS ANGELES, CALIFORNIA AND 1200 18th STREET, N.W., WASHINGTON, D.C.

g) OCTOBER 1983 - JUNE 1985 -- CHIEF COUNSEL, REAGAN-BUSH '84, 440 FIRST STREET, N.W. WASHINGTON, D.C. 20001

h) JUNE 1985 - PRESENT, -- CONSULTANT, DEPARTMENT OF HEALTH AND HUMAN SERVICE, 200 INDEPENDENCE AVENUE, S.W., WASHINGTON, D.C.

8. Government experience:

JUNE 1985 - PRESENT -- CONSULTANT, DEPARTMENT OF HEALTH AND HUMAN SERVICES, WASHINGTON, D.C.

9. Memberships:

a) MEMBER - STATE BAR ASSOCIATION OF CALIFORNIA - 1964 TO PRESENT

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b) MEMBER BOARD OF VISITORS - PEPPERDINE UNIVERSITY SCHOOL OF LAW

c) MEMBER PHI ALPHA DELTA LEGAL FRATERNITY

d) MEMBER BOARD OF DIRECTORS - SECRETARY - NEW AMERICAN FOUNDATION (FORMERLY CFTR EDUCATIONAL FOUNDATION)

10. Political affiliations and activities:

a) REGISTERED REPUBLICAN

b) CHIEF COUNSEL - REAGAN-BUSH '84 - $500.00 CONTRIBUTION

c) FORMER MEMBER AND GENERAL COUNSEL - CITIZENS FOR THE REPUBLIC (MULTI-CANDIDATE COMMITTEE) - TOTAL CONTRIBUTIONS SINCE 1980 APPROXIMATELY $400.00

11. Honors and Awards:

a) UNIVERSITY OF CALIFORNIA AT LOS ANGELES SCHOOL OF LAW - MANAGING EDITOR UCLA LAW REVIEW 1963-1964

b) UNIVERSITY OF CALIFORNIA OF LOS ANGELES SCHOOL OF LAW - MOOT COURT HONORS AWARD 1962

c) MEMBER - BETA GAMMA SIGMA HONOR SOCIETY

d) HONORARY MEMBER - DELTA THETA PHI - LEGAL FRATERNITY

12. Published writings:

MY ONLY PUBLISHED WRITING WAS A CASE NOTE RELATING TO CONFLICTS OF LAWS AND A SYMPOSIUM ON COMMERCIAL LAW WHICH APPEARED IN THE UCLA LAW REVIEW IN 1962-1964.

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Senator DURENBERGER. The questions will be brief. First, to test your good humor: As general counsel, you will be called upon to interpret the intent of Congress in connection with the implementation of various laws. To what extent do you see those interpretations being influenced by the policy goals established by the Department and the administration, which might be translated by the Office of Management and Budget?

Mr. ROBERTSON. That is a difficult question, Senator.

Senator DURENBERGER. I have asked it of you before, though.

Mr. ROBERTSON. Obviously, it focuses on the tensions which arise when budgetary policy influences the rulemaking process, and that is an issue that I will be extremely sensitive to and certainly would not in any way counsel that the Department, through the process of regulation, impinge on the prerogatives of Congress, particularly in the budgetary area.

Senator DURENBERGER. How do you view your role in the policymaking process at the Department? At what stage would you, as general counsel, enter into a policymaking role at the Department?

Mr. ROBERTSON. In my view, in order for the general counsel to provide maximum benefit and service to the client, the Department of Health and Human Services, the general counsel should be involved at the very inception of the policy development process. And in discussing that issue with Secretary Heckler, that is certainly her view as to the appropriate time in the process when the general counsel would become involved.

Senator DURENBERGER. Let me ask you a sort of related question, since policy comes from various directions sometimes. The Secretary has been taken to court on a number of payment issues under the Medicare Program. The issue of malpractice costs comes to mind where 22 U.S. district courts have found that the law supports the plaintiff's case. Can you relate your thoughts on how this kind of situation might be resolved? At what point do you believe the applicable regulations should be changed to reflect the decisions of the judicial system?

Mr. ROBERTSON. The Department of Health and Human Services, Health Care Financing Administration, to be specific, is now in the process of developing new regulations to address this issue. In my view, that process should be accelerated; and if a situation of this type were to arise in the future, it would certainly be my counsel that it be addressed in an expeditious way so as to avoid the protracted litigation that has developed in this area.

Senator DURENBERGER. Thank you very much. Do you have anything else, Mr. Robertson?

Mr. ROBERTSON. No.

Senator DURENBERGER. I think that that concludes the questions that we have. We appreciate very much your willingness to take on this task. I am sure we will see more of you, and I will look forward to each of those occasions. Thank you very much.

Mr. ROBERTSON. Thank you very much, Senator.

Senator DURENBERGER. The hearing is adjourned.

[Whereupon, at 2:09 p.m., the hearing was adjourned.]

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